

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<b>In Re:</b>  <b>W.R. GRACE &amp; CO., et al.,</b>  <b>Debtors.</b>	<b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b>	<b>Chapter 11</b>  <b>Jointly Administered</b> <b>Case No. 01-01139 (JKF)</b>
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**FEE AUDITOR'S FINAL REPORT REGARDING  
FEE APPLICATION OF DUANE MORRIS LLP  
FOR THE SIXTH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C. ("Smith"), acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Sixth Interim Quarterly Fee Application of Duane Morris LLP (the "Application").

**BACKGROUND**

1. Duane Morris LLP ("Duane Morris") was retained as counsel to the official committee of asbestos property damage claimants. In the Application, Duane Morris seeks approval of fees totaling \$89,953.00 and costs totaling \$8,038.01 for its services from July 1, 2002 through September 30, 2002.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time entries included in the exhibits to the Application for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2001, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330, Issued January 30,

1996, (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served on Duane Morris an initial report based on our review, and received a response from Duane Morris, portions of which response are quoted herein.

## **DISCUSSION**

### General Issues

3. In our initial report, we noted that although the Application divides the individual time entries by codes, it does not identify these codes as project categories. Pursuant to the Guidelines Rule II.D. (1) “[t]o facilitate effective review of the application, all time and service entries should be arranged by project categories.” This issue has been addressed in previous reports. We asked Duane Morris to consult the Court-approved spreadsheet for appropriate project categories when preparing future fee applications.

4. We further noted that Duane Morris did not provide a summary of fees by project category. The Amended Administrative Order Under 11 U.S.C. §§ 105 (a) and 331 Establishing Revised Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Official Committee Members (the “Amended Administrative Order”) in this case, requires such a summary in order to provide the court with “a spreadsheet showing all fees and expenses paid, by category to each professional and committee member, in each quarterly period....” We requested Duane Morris to provide said summary in future applications.

5. In our initial report, we noted time entries were generally adequately detailed, though a number of Duane Morris timekeepers lumped their time entries. JH Lemkin, R. Lagravenis and

K. Shannon consistently lumped tasks in their entries. Local Rule 2016-2(d)(vii) states, “Activity descriptions shall not be lumped – each activity shall have a separate description and a time allotment.” Paragraph II.D.5. of the Guidelines states, “ .... Services should be noted in detail and not combined or "lumped" together, with each service showing a separate time entry; .... We asked Duane Morris to advise these timekeepers to avoid lumping their entries in the future.

#### Specific Expense Entries

6. We noted that At Ash (\$125), R. Lagravis (\$130), BA Gruppo (\$135), K. Shannon (\$120) and SA Hollinghead (\$125) spent a total of 28.50 hours and \$3,655.00 on tasks that may be considered nonreimbursable overhead. See Exhibit A. Paragraph II. E. 7. of the Guidelines states “[f]actors relevant to a determination that the expense is proper include the following: . . . Whether the expenses appear to be in the nature of nonreimbursable overhead . . . Overhead includes word processing, proofreading, secretarial and other clerical services, . . .” We asked Duane Morris to review Exhibit A and to explain why these activities should not be considered nonreimbursable overhead. Duane Morris responded as follows:

The entries listed on Exhibit A to the Initial Report include such tasks as electronic filing of documents with the court, legal research including review of asbestos online subscription services, and review of pleadings. With regard to electronic filing, this task requires training from the court and is appropriate for a paralegal, or an attorney, in order to ensure that documents are properly filed and recorded on the court's docket. Legal research is also a task that is best performed by an attorney or paralegal. Research and informed review of legal periodicals should not be performed by someone without any training in law or research. With regard to the review and maintenance of pleadings, Duane Morris believes that it is necessary for someone with paralegal training (as opposed to a secretary or file clerk) to review and organize the pleadings so that necessary documents will be available for hearings. These tasks are not merely clerical. They are not general maintenance of office paperwork, but rather require an understanding of the type of documents being reviewed.

We believe we understand Duane Morris’ response, but we still maintain that tasks such as scanning,

copying and preparing labels should be considered nonreimbursable overhead. Thus, we recommend a reduction of \$254.00 in fees.

7. In our initial report, we noted that on July 29, 2002 JH Lemkin (\$235) billed 1.30 hours and \$305.00 for "downloading and forwarding" documents among other activities.<sup>1</sup> These appear to be ministerial tasks unbefitting a \$235-an-hour professional. The entry is shown below.

7/29/2002	JH LEMKIN	REVIEW SEALED AIR DOCKET 1.30 \$305.50 AND VARIOUS ORDERS; CONFER WITH W. KATCHEN REGARDING ORDERS; REVIEW DOCKET (3X) FOR FRAUDULENT TRANSFER; DOWNLOAD OPINION AND FORWARD TO MR PASQUALE AND MR KRUGER; REVIEW JUDGE WOLIN'S OPINION.
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The U.S. Trustee Guidelines Rule, I.E. states ". . . [i]n evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged;. . ." We requested Duane Morris to explain why it was necessary for a professional at this billing level to perform these tasks. Duane Morris' response is provided below:

The time entry narrative includes numerous tasks in addition to "downloading and forwarding" documents, including review of court orders and conference with Attorney Katchen regarding the same, review of the court's docket in the case and review of a certain judicial opinion in the case. To the extent that Attorney Lemkin performed "downloading and forwarding" of documents, these tasks required approximately 0.20 hours, at a cost of \$47.00. Duane Morris has no objection to a corresponding reduction of \$47.00.

We accept Duane Morris' explanation and thus recommend a reduction of \$47.00 in fees.

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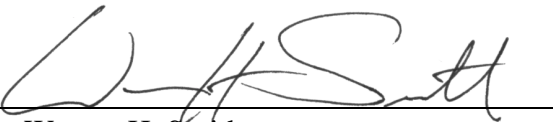
<sup>1</sup> Because of lumping in the entry it is not possible to accurately separate the time spent on the tasks in question.

### CONCLUSION

8. Thus we recommend approval of fees totaling \$89,652.00 (\$89,953.00 minus \$301.00) and costs totaling \$8,038.01, for Duane Morris' services from July 1, 2002 through September 30, 2002.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

By: 

Warren H. Smith

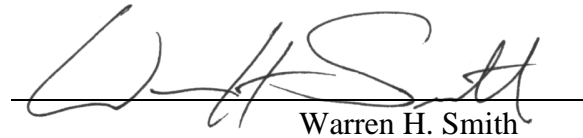
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**FEE AUDITOR**

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served First Class United States mail to the attached service list on this 6<sup>th</sup> day of February, 2003.

  
Warren H. Smith

**SERVICE LIST**

**Notice Parties**

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EXHIBIT A<sup>2</sup>

8/21/2002	AT ASH	SCAN, CONVERT TO PDF AND E-FILE RESPONSE TO FEE AUDITOR'S REPORT BY FTI AND RESPONSE OF DUANE MORRIS LLP PER R. SIANNI'S REQUEST.	0.60	\$ 75.00
8/22/2002	AT ASH	SCAN,PDF AND E-FILE SUPPLEMENTAL CERTIFICATES OF SERVICE FOR DUANE MORRIS AND FTI POLICANO'S RESPONSE TO FEE AUDITOR'S REPORT.	0.40	\$ 50.00
9/6/2002	R LAGRAVENIS	REVIEW, SORT AND ORGANIZE CORRESPONDENCE, PLEADINGS, DISCOVERY, AND OTHER CASE MATERIALS, INDEX PLEADINGS, FILING OF MONTHLY OPERATING REPORTS AND PROFESSIONAL FEE APPLICATIONS.	2.80	\$364.00
9/13/2002	R LAGRAVENIS	REVIEW, SORT, ORGANIZE AND INDEX PLEADINGS, ADVERSARY MATTERS, AND CORRESPONDENCE.	2.20	\$286.00
9/16/2002	R LAGRAVENIS	REVIEW, SORT & FILE PLEADINGS AND INDEX SAME.	0.50	\$65.00
9/18/2002	R LAGRAVENIS	REVIEW, SORT, ORGANIZE PLEADINGS AND CORRESPONDENCE. SORT DISCOVERY AND TRIAL PLEADINGS SEPARATELY AND INDEX SAME.	0.60	\$78.00
9/20/2002	R LAGRAVENIS	REVIEW, SORT, FILE AND INDEX PLEADINGS, CORRESPONDENCE AND RELATED CASE MATERIALS.	0.50	\$65.00
9/25/2002	BA GRUPPO	RECEIPT & REVIEW OF	0.10	\$13.50

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<sup>2</sup> Because of lumping it is not possible in every instance to accurately separate overhead entries from others that may not qualify as overhead.



		ONLINE WWW SUBSCRIPTIONS – COPYING OF ASBESTOS- RELATED ITEMS AS REQUESTED AND FORWARDING SAME TO W.S. KATCHEN		
9/26/2002	BA GRUPPO	RECEIPT & REVIEW OF ONLINE WWW SUBSCRIPTIONS - COPYING OF ASBESTOS- RELATED ITEMS AS REQUESTED AND FORWARDING SAME TO W.S. KATCHEN	0.20	\$ 27.00
9/30/2002	BA GRUPPO	RECEIPT & REVIEW OF ONLINE WWW SUBSCRIPTIONS - COPYING OF ASBESTOS- RELATED ITEMS AS REQUESTED AND FORWARDING SAME TO W.S. KATCHEN	0.10	\$ 13.50
7/31/2002	K. SHANNON	SEARCH FOR CASE LAW, REVIEW AND PRINT; DRAFT MEMO TO WK REGARDING SAME	1.50	\$180.00
8/1/2002	K. SHANNON	SEARCH FOR, REVIEW AND PRINT VARIOUS CASES AND CASE LAW IN LEXIS FOR WK.	1.50	\$180.00
8/5/2002	K. SHANNON	PERFORM SEARCH OF VARIOUS DOCKETS IN SEARCH OF RESPONSE DOCUMENTS; PRINT DOCKET; DISCUSSION MATTER W/JL.	0.80	\$ 96.00
8/12/2002	R GRAVENIS	REVIEW, SORT, ORGANIZE, AND INDEX PLEADINGS	1.50	\$195.00
8/14/2002	K SHANNON	SEARCH FOR AND PRINT CASE LAW.	0.60	\$ 72.00
8/14/2002	R. LAGRAVENIS	REVIEW, SORT, ORGANIZE AND INDEX PLEADINGS, DISCOVERY AND CORRESPONDENCE MATERIALS.	2.10	\$273.00
8/15/2002	R LAGRAVENIS	REVIEW, SORT AND ORGANIZE FILE INDEX AND	1.20	\$156.00

8/21/2002	R LAGRAVENIS	PLEADINGS. REVIEW, SORT, ORGANIZE, AND INDEX CORRESPONDENCE AND PLEADINGS.	0.40	\$52.00
8/26/2002	R. LAGRAVENIS	REVIEW, SORT, ORGANIZE, FILE AND INDEX PLEADINGS, DISCOVERY, ATTORNEY NOTES, CORRESPONDENCE, AND LEGAL RESEARCH JULY AND AUGUST 2002.	2.10	\$273.00
8/27/2002	R LAGRAVENIS	REVIEW, SORT, ORGANIZE, AND INDEX PLEADINGS, CORRESPONDENCE, CLAIM FORMS, MEMORANDA, AND DISCOVERY. ARRANGE FOR FILING AND STORAGE OF SAME	2.30	\$299.00
8/28/2002	SA HOLLINGHEAD	PREPARE SERVICE LIST/LABELS FOR SERVICE OF NOTICE OF QUARTERLY FEE APPLICATION FOR DUANE MORRIS AND AFFIDAVIT OF EDWIN ORWAY.	0.60	\$75.00
8/29/2002	R LAGRAVENIS	REVIEW, SORT, ORGANIZE AND INDEX PLEADINGS, CORRESPONDENCE, DISCOVERY, AND LEGAL RESEARCH. REVIEW AND PROOFREAD INDEX.	3.20	\$416.00
9/4/2002	R LAGRACENIS	REVIEW, SORT, INDEX AND FILE PLEADINGS, CORRESPONDENCE, AND DISCOVERY.	2.70	\$351.00